

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9638 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHAGWATPRASAD K.THAKKER

Versus

MANAGING DIRECTOR, LIFE INSURANCE CORPORATION OF INDIA

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Appearance:

MR GT PARIKH for Petitioner

MR HM BHAGAT for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/09/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, a retired officer of Life Insurance Corporation of India, filed this special civil application before this Court and grievance has been made that the respondents have arbitrarily rejected his claim of stagnation increment which was due on 1-9-1992. Further prayer has been made for direction to the respondents to give him the stagnation increment from 1-9-1992 with all other consequential benefits which

follow therefrom.

3. In annexure 'K', the petitioner has given out that because of this illegal action of the respondents he has been deprived of Rs.16043-20 and further loss of approximately Rs.100/- p.m. in pension till he survives and Rs.50/- p.m. to his wife after his death.

4. The petitioner submitted a representation for grant of stagnation increment to him from 1-9-1992 but that came to be rejected under the orders of the respondents dated 6th February, 1993 and 5th April, 1994. In both those orders, no reason good, bad or indifferent has been given for denial of stagnation increment to the petitioner. Against those arbitrary orders, the petitioner filed this special civil application before this Court on 25th July, 1994. This petition has come up for admission before this court on 26th July, 1994. This Court has been pleased to issue notice to the respondents returnable on 9th August, 1994. The counsel for the respondents admit that notice of rule of this Court aforesaid has been served on the respondent on 1st August, 1994. After service of notice, the petitioner has been served with a chargesheet vide memo dated 24th August, 1994 and if we go by this chargesheet then some alleged lapses of the petitioner in 1991-92 were made the subject matter of the charges. The petitioner retired from the services of the respondent on 31st August, 1994. So this chargesheet has been given to the petitioner few days before his retirement. From the endorsement which has been there on copy of this chargesheet, I find that the petitioner has received the same with protest on 27th August, 1994.

5. The counsel for the respondents contended that the grant of stagnation increment is not automatic but the service record of the petitioner should be satisfactory. His case for grant of stagnation increment has been considered but as his work was not satisfactory he was not given the benefit of the same. At two stages his case has been considered that is for giving him the stagnation increment from 1-9-1992 and then from 1-9-1993 and on both the occasions what has been stated in the reply that his work record was not satisfactory. In para-5 of the reply, reference has been made to the chargesheet dated 24th August, 1994. This reference has been made on averment of the petitioner in the special civil application that he has clean and blotless entire service record of 34 years. Against this averment, only adversity has been pointed out of the chargesheet aforesaid. In reply to the special civil application, no material whatsoever has been produced to show and

establish that the service record of the petitioner was not satisfactory or his work was not satisfactory.

6. The counsel for the respondents placed reliance on the decision of this Court in special civil application No.1638/97 decided on 11-7-1997. It is true that the grant of stagnation increment is subject to condition that the work of the concerned officer is being found satisfactory by the Managing Director. In that case the Court has opined that the Managing Director has considered the case of the petitioner therein and his work was not found satisfactory. Each case has to be decided on its own facts. In that case, there may be material against the petitioner on the basis of which the satisfaction could have been recorded that his work was not satisfactory but in this case, the respondents have not produced any material on record to show that the work and performance of the petitioner as well as his service record were not satisfactory. In the absence of anything on record, assessment of the work to be unsatisfactory is nothing but an arbitrary and perverse assessment. The satisfaction though is of the authority but it cannot be without there being any basis or material in support thereof. Opinion has to be formed on the basis of material on record howsoever it may be subjective. The only adversity which has been given out in this case is of chargesheet dated 24th August, 1994, reference to which has been made earlier. This chargesheet is a malafide act on the part of the respondents. It is nothing but only a creation of some evidence to show that the work of the petitioner was not satisfactory.

7. The background in which this chargesheet has been given is also very important and relevant. After service of rule of this writ petition, this chargesheet has been given and with reference to some alleged default and error in performance of the petitioner. If it would have been really the matter of serious concern as what now it is presented to be then why the chargesheet was not given to the petitioner immediately. What for the respondents were waiting? For the day when the petitioner file this petition and this Court will issue notice to them. If we go by the chargesheet, then the charges are also not of very serious nature and it does not result in any loss to the Corporation. These are the charges of the nature which have been deliberately and purposely made out at the fag end of the petitioner's career. The petitioner's service record is admittedly clean for all the years i.e. for 34 years and for all these years, the petitioner was never served with any memo or his work was never reported to be adverse or unsatisfactory nor he has been punished.

8. Taking into consideration all these facts, the denial of stagnation increment to the petitioner from 1-9-1992 is wholly arbitrary and unjustified.

9. I have considered the matter for quashing of the chargesheet also. This chargesheet has been produced by the petitioner on record of this special civil application along with the rejoinder. This chargesheet deserves to be quashed only on the ground that is a malafide act on the part of the respondents. Otherwise also, looking to the substance of the charges, it can be said that it has been purposely and deliberately manufactured to make out some defence in the special civil application. In the rejoinder, the petitioner cited an example of one Shri Shivrambhai B. Parmar against whom a criminal complaint has been pending and still he has been given the promotion.

10. Taking into consideration the totality of the facts of this case, the chargesheet dated 24th August, 1994, annexure 'M' at page no.55 cannot be allowed to stand.

11. The counsel for the respondents contended that the petitioner has not challenged this chargesheet and further no prayer has been made by the petitioner for quashing of the same. It is true that the petitioner has not challenged this chargesheet in the main petition as well as the prayer has not been made for quashing of the same. However, in the rejoinder, the petitioner has challenged the validity of this chargesheet and one of the grounds given is that it has been manufactured to create a false evidence against him. At the time of the filing of the special civil application, this chargesheet was not there and the petitioner had no occasion to make such a prayer in this special civil application. So far as the prayer part is concerned, the prayer made by the petitioner in clause (E) of para-16 is sufficiently wide and this Court can give any relief as it deem fit and proper in the facts of the case. This chargesheet is a subsequent creation of the respondents and when this Court has found it to be a manufactured document for the defence purpose in this case then it cannot be allowed to stand.

12. In the result, this special civil application succeeds and it is hereby declared that the case of the petitioner for the grant of stagnation increment from 1-9-1992 has arbitrarily been rejected. The respondents are directed to consider the case of the petitioner for

grant of stagnation increment to him from 1-9-1992 and he shall be entitled for all the consequential benefits which follow therefrom i.e. arrears of pay as well as revision of pay and all the retirement benefits given to him. The petitioner shall be entitled for the interest on this amount at the rate of 12% p.a. from due date. The chargesheet dated 24th August, 1994, annexure 'M' is quashed and set aside. The petitioner has unnecessarily been dragged in the litigation. Not only he has been dragged in the litigation which only pertains to one stagnation increment but to defend his claim the respondents have manufactured a document i.e. the chargesheet against him for which there is no justification. In view of this fact, it is a fit case where the petitioner should be awarded the costs. The counsel for the petitioner states that in all the petitioner has incurred about Rs.10,000/- in litigating this matter before this Court. However that expenses may be inclusive of other necessary expenses of litigation. The respondents are directed to pay to the petitioner Rs.5000/- by way of costs of this special civil application. Necessary orders for granting of stagnation increment to the petitioner from 1-9-1992 and the determination of arrears payable to him as well as the revision of retirement benefits and payment of arrears thereof should be made and the same should be paid to the petitioner together with interest as ordered within a period of six months from the date of receipt of writ of this order. Rule is made absolute accordingly.

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